FILE COPY

JUN 28 1949

CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

No. 146

ALCOA STEAMSHIP COMPANY, INCORPORATED, CUNARD WHITE STAR LIMITED, NEW YORK AND CUBA MAIL STEAMSHIP COMPANY, JOHN W. McGRATH CORPORATION, and THE JARKA CORPORATION,

Petitioners,

against

JOSEPH McMAHON, as President, MARTIN J. LYNCH, as Secretary, and HAROLD COMERFORD, as Business Agent of LOCAL 895, PETER O'SHEA, as President, WILLIAM P. LYNCH, as Secretary, and JAY O'CONNOR and JOHN J. SAMPSON, as Business Agents of LOCAL 791, and JOHN HARTNETT, as President, PATRICK KEANE, as Secretary, and JOHN SULLIVAN, as Business Agent of LOCAL 1258, of the International Longshoremen's Association, and

LOCAL 895, LOCAL 791, and LOCAL 1258 of the International Longshoremen's Association, a labor organization affiliated with the American Federation of Labor,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

A. V. Cherbonnier,
Counsel for Petitioners,
120 Broadway,
New York 5, N. Y.

Louis J. Guerrano,
Of Counsel.

Parkside Press, Inc., 32 Thames St., New York 6, N. Y. U. S. A.

INDEX.

PAGE

Opinions Below 2

Facts 2

Extent of Injunctive Relief Requested Not at Issue 7

Question Presented 7

Reasons for Granting Petition 9

Point I.—An admitted breach of one of the provisions of a valid and existing collective bargaining agreement, the meaning of which is not in dispute, does not constitute a labor dispute within the intendment of the Norris-LaGuardia Act 15

Conclusion 26

Authorities Cited.

PAGE

Cf. *Bakery Drivers' Union* v. *Wagshal*, 333 U. S. 437, 443 (1948) 25

Communication Workers v. *Telephone Co.*, 22 L. R. R. M. 2495 (D. C. Col., 1948) 15

Donovan Lumber Mills v. *International Woodworkers of America Local No. 46*, 4 Wash. 2d 62, 102 P. 2d 270 (1940) 23

Florsheim Shoe Store Co. v. *Shoe Salesmen's Union*, 288 N. Y. 188, 42 N. E. 2d 480 (1942) 22

Fur Workers' Union, Local No. 72 v. *Fur Workers' Union* (1939), 105 F. 2d 1, aff'd 308 U. S. 522 24

H. J. Heinz Co. v. *N. L. R. B.*, 311 U. S. 514 (1941) 17

Oberman & Co., Inc. v. *United Garment Workers of America, et al.*, 21 F. Supp. 20 (1937) 22

Teller, Labor Disputes and Collective Bargaining (1940), p. 527; Supplemental Section 177 15

Timken Roller Bearing Co. v. *N. L. R. B.*, 161 F. (2) 949 (1947) 17, 18, 19

Union Premier Food Stores Inc. et al. v. *Retail Food Clerks and Manager's Union, Local No. 1357*, 98 F. 2d 821 (3d Cir., 1938), aff'd 101 F. 2d 475 (3d Cir., 1939) 23, 24

United States v. *Mine Workers*, 330 U. S. 258 (1947) 20

Statutes.

Labor Management Relations Act of 1947, 29 U. S. C. Sec. 141, 158(d) 10, 11

Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. Sec. 101 *et seq.* 6, 7, 8, 9, 11, 15, 17, 18, 21, 22, 24, 25

Taft-Hartley Act, 61 Stat. 136, 29 U. S. C. Sec. 141 *et seq.* 17

Wagner Act, 49 Stat. 449, 29 U. S. C. Sec. 151 *et seq.* 17

Title 28 U. S. C. Section 1254 2

Title 28 U. S. C. Section 2201 5

Supreme Court of the United States

No. .

ALCOA STEAMSHIP COMPANY, INCORPORATED, CUNARD WHITE STAR LIMITED, NEW YORK AND CUBA MAIL STEAMSHIP COMPANY, JOHN W. MCGRATH CORPORATION, and THE JARKA CORPORATION,

Petitioners,

against

JOSEPH MCMAHON, as President, MARTIN J. LYNCH, as Secretary, and HAROLD COMERFORD, as Business Agent of LOCAL 895, PETER O'SHEA, as President, WILLIAM P. LYNCH, as Secretary, and JAY O'CONNOR and JOHN J. SAMPSON, as Business Agents of LOCAL 791, and JOHN HARTNETT, as President, PATRICK KEANE, as Secretary, and JOHN SULLIVAN, as Business Agent of LOCAL 1258, of the International Longshoremen's Association, and

LOCAL 895, LOCAL 791, and LOCAL 1258 of the International Longshoremen's Association, a labor organization affiliated with the American Federation of Labor,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Petitioners pray that a writ of certiorari be issued to review an order of the U. S. Court of Appeals for the Second Circuit (R. 65-66), which order affirmed a final order of the District Court of the United States for the Southern District of New York, denying petitioners the injunctive relief prayed for in their petition and dismissing said petition (R. 59-60) on the sole ground that the Court

lacked jurisdiction to act because of the provisions of the Norris-LaGuardia Act (R. 60).

The order of the U. S. Court of Appeals was entered on March 31, 1949 (R. 66). The jurisdiction of this Court to review this case on a writ of certiorari is provided by Section 1254, Title 28 U. S. C.

Opinions Below.

The U. S. Court of Appeals rendered a *per curiam* opinion. The opinion of the District Judge is reported in 81 F. Supp. 541 and appears at pages 52-58 of the record. The opinion of the Court below is reported in 173 F. (2) 567 and appears at pages 64-65 of the record.

Facts.

Petitioners seek coercive relief against union officials to prevent the continuation of an arbitrary refusal to comply with one of the provisions of a valid and existing collective bargaining agreement, the meaning of which is not in dispute.

Petitioners Alcoa Steamship Company, Incorporated, Cunard White Star Limited, and New York and Cuba Mail Steamship Company, are common carriers by water in foreign trade (R. 6); petitioners John W. McGrath Corporation and The Jarka Corporation, are stevedoring companies (R. 7), and all are parties to the collective bargaining agreement, a provision of which respondents are admittedly breaching.

Respondents are officers of three locals of the International Longshoremen's Association (hereinafter referred to as I. L. A.), a labor organization affiliated with the American Federation of Labor, and such local unions (R. 7).

On May 27, 1946, petitioners, together with approximately 100 other employers, and the I. L. A. acting on its own behalf and on behalf of its affiliated locals in the Port of Greater New York and vicinity, including the respondents, Local 791, Local 895, and Local 1258 (hereinafter referred to as respondent locals) entered into a valid collective bargaining agreement (R. 27-41), and on August 21, 1947, the said collective bargaining agreement was revised (R. 42-46) and Clause 13(a) was amended to read as follows:

> "Minimum number of men in gang when loading or discharging general cargo shall be 20 men, not less than 8 holdmen and the balance of the gang to be distributed between the the hold, deck and dock at the discretion of the employer * * *."

There are five excepted categories of cargo which are not involved (R. 48).

Respondents are parties to and bound by the terms of that agreement (R. 49).

On August 26, 1947, and on various dates thereafter, petitioners, employing members of respondent locals, assigned more than 8 men in a gang of 20 men into the hold of certain vessels in the course of loading and unloading operations, i.e., 12 men were assigned to work in the hold, 4 men on the dock, and 4 men on the deck. The members of such gangs refused to so distribute themselves and decided upon their own distribution of 8 men in the hold, 8 men on the dock, and 4 men on the deck.

By their conduct the longshoremen have been causing petitioners to pay to them money for services which are not being performed and, in the words of Judge Knox, constitute "a waste of manpower and a burden on interstate and foreign commerce" (R. 49), inasmuch as their action, in the words of Judge Rifkind, "is on the one hand greatly

to prolong the duration of the operations and on the other to leave a portion of the 'gang' standing idle on deck or pier because the men in the hold are too few to handle cargo rapidly" (R. 54 & 59).

Such refusal of distribution at the instruction of petitioners, was directed, authorized, or ratified by the officers of respondent locals (R. 13-14).

When more than 8 men in a gang of 20 refused to work in the hold as directed, petitioners promptly communicated with the responsible union officials of the I. L. A. regarding petitioners' rights to distribute the gangs in any ratio (provided 8 men were assigned to the hold) and they agreed that the distribution made by petitioners was proper under Clause 13(a) of the collective bargaining agreement. Petitioners were further informed by the officials of the I. L. A. that the members of all other affiliated locals* in the Port of Greater New York and vicinity work in accordance with the distribution made by petitioners, and that the officers of respondent locals were not justified in directing, authorizing or encouraging the members in their refusal to distribute themselves as directed by petitioners.

When respondents continued in their refusal to distribute themselves so that 12 men were to work in the hold, 4 on the dock and 4 on the deck, petitioners again communicated with the responsible union officials, including the President of the I. L. A., and stated that if there was any dispute regarding Clause 13(a) of the collective bargaining agreement, petitioners were prepared to arbitrate as provided for in Clause 21 (R. 39-41).

A controversy then existed regarding the meaning of the agreement between petitioners and respondent locals be-

---

* There are not less than 30 locals of longshoremen in the Port of Greater New York and vicinity which are affiliated with the I. L. A.

cause at that time, although certain high officials of the I. L. A. had informed petitioners that petitioners' interpretation of Clause 13(a) was correct, respondent locals nevertheless insisted upon their own interpretation, which differed from the interpretation of petitioners (R. 48). Arbitration, as provided for in Clause 21 of the collective bargaining agreement, was not pursued because the officials of the I. L. A., who had the power to appoint the representatives to the Arbitration Committee, stated that there was nothing to arbitrate inasmuch as the I. L. A. agreed with petitioners' interpretation of Clause 13(a). In this state of hiatus it was decided by all parties involved, including the New York Shipping Association, that the best way to resolve the controversy and end the dispute was by declaratory judgment as provided by Section 2201, Title 28 U. S. C.

Accordingly, petitioners filed a complaint in the U. S. District Court for the Southern District of N. Y. for declaratory judgment in which a construction of the collective bargaining agreement was sought. Respondent locals did not object to having the controversy resolved by declaratory judgment and the issues were submitted to the Court. No injunctive relief was sought—none could be granted—when the complaint for declaratory judgment was filed because at *that* time a labor dispute over the meaning of the collective bargaining agreement existed. On May 26, 1948, after a hearing was had before Judge Knox where the contentions of both sides were advanced, a declaratory judgment was entered (R. 25-26) which was based upon findings of fact and conclusions of law (R. 47-51). The judgment sustained the interpretation of the collective bargaining agreement advanced by petitioners. Respondents accepted such interpretation and no appeal was taken.

The agreement of August 21, 1947, after its meaning had been validly and finally resolved, expired by its own terms on August 21, 1948, (R. 46) and in the negotiations for a new agreement no demand or request was made to change in any way the wording of Clause 13(a), although approximately 10 other demands were made. As a result of the negotiations in 1948 a new agreement was reached which is now in existence and does not expire until September 30, 1949, and no change was made in the wording of Clause 13(a).

Despite the fact that no demand was made to change in any way the wording of Clause 13(a), respondent locals continued to breach and now are breaching the provisions of such clause, the meaning of which no longer is in dispute.

When respondent locals continued to breach Clause 13(a), although admitting that there was no dispute regarding the meaning thereof, no "labor dispute" within the intendment of the Norris-LaGuardia Act *then* existed and accordingly petitioners filed a petition for injunctive relief in the United States District Court for the Southern District of New York.

Respondents did not and do not deny the facts as set forth in the petition, and at the hearing thereon before Judge Rifkind, they did not oppose an injunction (R. 53).

However, Judge Rifkind, in an opinion dated November 5, 1948, dismissed the petition on the sole ground that the case presented a "labor dispute" concerning terms and conditions of employment (R. 59-60) and, therefore, the Court was deprived of jurisdiction because of the Norris-LaGuardia Act (R. 60). The Court of Appeals for the Second Circuit affirmed the order of dismissal (R. 65-66).

Extent of Injunctive Relief Requested Not At Issue.

The injunctive relief requested in the petition filed with the District Court was directed against the individual members as well as against the officials of respondent locals (R. 21-24)*. Petitioners are convinced, however, that once injunctive relief is obtained against the officials of respondent locals the collective bargaining agreement will not be violated by the individual members. Accordingly petitioners are willing to and do withdraw their request for relief against the individual members of respondent locals.

At all events the extent of relief which may be awarded petitioners by the District Court is not a question that is or will be before this Court, inasmuch as the lower Courts have decided only that the Norris-LaGuardia Act deprives the District Court of jurisdiction (R. 60). What relief may be awarded petitioners in the absence of the prohibition of that Act was not involved in their decision.

The only issue that is presented, therefore, is whether the lower Courts were correct in holding that where a party to a collective bargaining agreement admittedly breaches one of its provisions the meaning of which is not in dispute, a "labor dispute" concerning terms and conditions of employment nevertheless exists within the intendment of the Norris-LaGuardia Act. In the event that certiorari is granted and this Court decides that no labor dispute existed when injunctive relief was sought, then, of course, the extent of the relief to which the facts may entitle petitioners will be matters upon which the District Court must decide.

Question Presented.

The case presents an important question concerning the prohibition imposed by the Norris-LaGuardia Act (the

---

* At the argument before the District Court, the demand for relief was modified by petitioners (R. 54).

pertinent provisions of which are set forth in an appendix hereto) against the granting by a Federal Court of any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute.

The question is, does an admitted breach of one of the provisions of a valid and existing collective bargaining agreement, the meaning of which is not in dispute, constitute a "labor dispute" concerning the terms and conditions of employment within the intendment of the Norris-LaGuardia Act?

It is respectfully submitted that while the action at bar is a "labor case" it is not a "labor dispute" as intended and defined by the Norris-LaGuardia Act; that when the terms and conditions of employment are contained in a valid collective bargaining agreement, the meaning of which is not in dispute, there can be no "labor dispute" concerning the terms and conditions of employment as long as the agreement is in existence; that the prohibition of the Act applies only to an existing dispute since the Act was not intended to nor does it hold a "labor dispute" in perpetuity so that it can never be resolved or ended.

To hold that an admitted breach, by either side, of a provision of a valid and existing collective bargaining agreement, the meaning of which is not in dispute, constitutes a labor dispute concerning the terms and conditions of employment within the intendment of the Act, is to sanction chaos in labor relations and to destroy collective bargaining, because under such a holding there can be no advantage to a signed collective bargaining agreement. Certainly, collective bargaining agreements purportedly for a fixed duration, but which may be repudiated

at will by either party, serve no purpose. We present in the brief accompanying this petition our argument that the lower Courts' interpretation of the term "labor dispute" is erroneous, in law. Moreover the decision is in conflict with the decisions of other Federal Courts as well as State Courts which unanimously recognize that the purpose of the Act is to encourage, not impair, collective bargaining, and that a "labor dispute" can be ended by determinations made by appropriate bodies and, when a labor dispute is thus settled, it ceases to exist and from that point on the Act has no application.

Reasons for Granting Petition.

1. The Courts below have passed upon a question of grave importance in the field of labor law which has not been but should be settled by this Court. The lower Courts have held that once a dispute arises over the meaning of a collective bargaining agreement it is impossible to resolve that dispute and it remains in perpetuity until the parties themselves mutually agree on a solution. This is so despite the fact that the parties had previously submitted the dispute for determination, with the result that either party under the protection of the Norris-LaGuardia Act may ignore the determination made and may breach the agreement. Implicit in the lower Courts' decision is also a determination that either party to a collective bargaining agreement for a fixed duration may repudiate the agreement at will, without fear of coercive sanction, even where no dispute over the meaning of the agreement ever existed. Applied to the case at bar it permits respondent locals to assert successfully as follows: we know we have a signed collective bargaining agreement which is still in force and effect; we do not dispute and we agree with the em-

ployers' interpretation of Clause 13(a); we do not desire to modify that provision by further collective bargaining and indeed the new collective bargaining agreement which we enter into may contain the same provision without objection from us; despite our acceptance of the provision, however, we shall encourage and instruct our individual members to violate it; this we can do for we know that no injunctive remedies against us are available to petitioners and that an action for money damages by them would be fruitless because damages could not be collected. If collective bargaining is as illusory as the Courts below have held, then there is no incentive for an employer to sign a collective bargaining agreement, with the inevitable result that the policy of the United States to encourage collective bargaining for the purpose of preventing labor disputes which burden or obstruct interstate and foreign commerce will be diminished if not defeated.

2. The decision is of paramount significance to labor relations existing in industry generally and particularly to the shipping industry. This is so because it is impossible, from a practical standpoint, for the members of the shipping industry to discharge the recalcitrant longshoremen and to hire longshoremen who will comply with the collective bargaining agreement. Ordinarily the employer's remedy of discharge, when it can be followed, is an effective one, since the union cannot modify the agreement before its expiration. In that respect, the express provisions of the Labor Management Relations Act of 1947 make it an unfair labor practice for either a union or employer to modify an existing collective bargaining agreement prior to its expiration and without at least 60 days notice. Section 158(d), Title 29 U. S. C. Longshoremen, however, are

engaged by a company only when it has a ship in port and for the most part they are hired from day to day. Each day the longshoremen "shape up" in front of piers at which ships are berthed and "gangs" of 20 men are hired for the tasks of that day. Petitioners, for practical reasons, cannot refuse to hire the "gangs" in which there are longshoremen who will not obey the collective bargaining agreement since all members of the "gangs" being controlled by the officials of the respondent locals, refuse to abide by the agreement. For petitioners to refuse to accept the recalcitrant individuals would be tantamount to petitioners not hiring any longshoremen at all, with consequent disaster to petitioners. Thus, respondent locals have succeeded in circumventing the provision of the Labor-Management Relations Act which makes it an unfair labor practice to modify an existing collective bargaining agreement; by professing no desire to modify the bargaining agreement, but by actually tolerating and encouraging the individual longshoreman in their breaches, the respondent locals have not only surreptitiously and effectively modified the agreement, but have also completely escaped the sanctions of the Labor-Management Relations Act. Whether respondent locals because of the Norris-LaGuardia Act, have also successfully escaped the sanctions which may be imposed by a court of equity is the question which this case presents.

3. The granting of certiorari in the case at bar is most urgent inasmuch as the decisions below, if allowed to remain, will have a widespread and devastating effect upon the worth of collective bargaining agreements. The decision of the Courts below, which, at the very least, impairs the efficacy of collective bargaining agreements, goes to the very heart of our entire labor structure and defeats the

policy of the United States to encourage collective bargaining. It is not disputed, and in fact the District Court below recognized, that collective bargaining is the legislatively established labor policy of the United States (R. 52). If labor difficulties and disputes are to be resolved by collective bargaining, an agreement once arrived at, where there is no dispute as to its meaning, must be enforceable not only against the employer but also against the union. Judge Rifkind recognized the gravity of the problem presented in the instant case; although he "reluctantly concluded that federal judicial action is precluded", he observed (R. 55): "The problem is urgent. Its social and industrial implications evoke a keen desire on the part of at least one judge to be the architect of a successful solution." The result of sanctioning an admitted breach of a collective bargaining agreement, the meaning of which is not in dispute, under the guise of a "labor dispute concerning terms and conditions of employment" was forcefully stated by Judge Rifkind (R. 52):

> "If collectively bargained agreements are mere pious hopes which do not in fact govern the conduct of employees and employers, then the whole system of orderly, democratic unionism will in course of time be acknowledged a failure. The inevitable result of such a development will be to confront us with a choice on one of three evils: industrial anarchy; a return to that unequal and inequitable system when the employment agreement was the product of private negotiation between the powerless employee and the all-powerful employer; or an authoritarian subjugation of both employers and employees."

It is submitted that the questions presented are of serious public importance and warrant the consideration of this Court.

WHEREFORE, your petitioners respectfully pray that writ of certiorari be issued to review the decision below.

Dated New York, N. Y., June 27, 1949.

By A. V. CHERBONNIER,
Counsel for Petitioners,
120 Broadway,
New York 5, N. Y.

LOUIS J. GUSMANO,
Of Counsel.

BRIEF IN SUPPORT OF PETITION.

POINT I.

AN ADMITTED BREACH OF ONE OF THE PROVISIONS OF A VALID AND EXISTING COLLECTIVE BARGAINING AGREEMENT, THE MEANING OF WHICH IS NOT IN DISPUTE, DOES NOT CONSTITUTE A LABOR DISPUTE WITHIN THE INTENDMENT OF THE NORRIS-LAGUARDIA ACT.

The case at bar does not present a labor dispute concerning the terms and conditions of employment, as the Courts below have held (R. 55-56 & 65). No labor dispute could exist concerning the terms and conditions of employment because the parties, by collective bargaining, have *agreed* in writing to the terms and conditions of employment and there is no controversy over the meaning of their agreement.

If labor disputes concerning terms and conditions of employment are effectively settled by a collective bargaining agreement binding on both parties for the duration of the agreement, and this surely must be so, then the only labor dispute that could thereafter arise between the parties concerning terms and conditions of employment would be with respect to the meaning of some provision of the collective bargaining agreement or with respect to some term or condition not covered by the agreement.* Where, however, the meaning of the provisions is undisputed, as is the case here, the mere dissatisfaction by one of the parties with

---

* Cf. *Communication Workers* v. *Telephone Co.*, 22 L. R. R. M. 2495 (D. C. Col. 1948), holding that the Norris-LaGuardia Act is inapplicable where a collective bargaining agreement is involved even where there is a dispute over the meaning of the agreement. To the same effect, see *Teller, Labor Disputes and Collective Bargaining* (1940), p. 527; 1947 Supplement Section 177.

the agreement made by him and his subsequent repudiation of the agreement, cannot create a labor dispute concerning terms and conditions of employment which have been agreed upon.

Petitioners do not complain, as the Court below seemed to imply (R. 65), merely because respondent locals have failed to comply with the provisions of the declaratory judgment which interpreted the collective bargaining agreement. The declaratory judgment is significant only in so far as it gives emphasis to the fact that at the time the petition for injunctive relief was filed there was no longer any dispute over the meaning of the collective bargaining agreement and at that time respondent locals were and are continuing to deliberately violate Clause 13(a). Indeed, the Court of Appeals (R. 64), as did Judge Rifkind (R. 53), recognized that at the time injunctive relief was sought the meaning of the collective bargaining agreement was not open to question and that respondent locals are "wrong doers" because "they refuse to carry out the contract of employment" (R. 64). Although the courts below recognized that respondent locals are deliberately violating the provisions of a valid and existing collective bargaining agreement the meaning of which is not in dispute, they hold that a labor dispute over the terms and conditions of employment exists.

But no controversy concerning the terms and conditions of employment could survive the execution of a collective bargaining agreement the meaning of which is not in dispute, as is the case here. It may be that before the execution of a collective bargaining agreement numerous controversies do exist between an employer and a union concerning the terms and conditions of employment. But the only purpose of entering into a collective bargaining agreement of any duration is to dispose of those contro-

versies effectively and to bind both parties for the duration of the agreement to the terms and conditions of employment agreed upon and set forth in the agreement. Unless collective bargaining is capable of accomplishing this, then it has failed its purpose. Unquestionably, collective bargaining is the legislatively established labor policy of the United States which has been expressed in the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. Sec. 101 *et seq.*, in the Wagner Act, 49 Stat. 449, 29 U. S. C. Sec. 151 *et seq.*, and in the Labor Management Relations Act of 1947, 61 Stat. 136, 29 U. S. C. Sec. 141 *et seq.* In *H. J. Heinz Co.* v. *N. L. R. B.*, 311 U. S. 514 (1941) this Court stated (at pp. 524 and 525):

> "* * * the signed agreement has been regarded as the effective instrument of stabilizing labor relations and preventing, through collective bargaining, strikes, and industrial strife. * * * Congress, in thus incorporating in the new legislation the collective bargaining requirement of the earlier statutes included as a part of it, the signed agreement long recognized under the earlier acts the *final step* in the bargaining process." (Italics ours.)

The Court of Appeals for the Sixth Circuit in *Timken Roller Bearing Co.* v. *N. L. R. B.*, 161 F. (2) 949 (1947), made it clear that the bargaining duty imposed upon employers by the law had for its end and purpose the negotiating and concluding of a *binding* agreement. At p. 953 the Court said: "This must be so for it would be mere futility to bargain without such objective." The importance of collective bargaining in the labor policy of the United States which had for its purpose the making of a mutually binding agreement, was declared by that Court (pp. 953-954):

> "This repeated asseveration of the importance of a written and signed agreement as the culminating

> step in the bargaining process so as to avoid industrial strife, does not contemplate and can by no process of reasoning be conceived as contemplating an unilateral undertaking by the employer binding upon him but devoid of controls on the bargaining agent or those for whom it speaks. Certainly, it is not without its disciplines over both of the parties to it, within the reasonable scope of its terms and conditions."

And at page 956 the Court stated:

> "The law invites, though it may not compel, a collective bargaining agreement. If adjudication bases no sanctions on commitments made therein by the bargaining agent, it imparts futility to a bargaining process hopefully developing in the interest of industrial peace."

Any interpretation of the Norris-LaGuardia Act which defeats its stated purpose to accomplish industrial peace through collective bargaining cannot be sustained. Yet the decision of the lower Courts if allowed to remain will succeed in placing an insurmountable stumbling block in the path of collective bargaining since the signing of a collective bargaining agreement for a fixed duration, which none the less can be repudiated at will, becomes nothing more than an idle gesture.

Nor can it be successfully urged by respondents that the duty to bargain collectively is a continuous statutory obligation which exists independently of all contractual obligations, so that the breach of an undisputed term of an existing collective bargaining agreement will serve to create a new labor dispute over which the employer must once more negotiate with the union. In *Timken Roller Bearing Co.* v. *N. L. R. B.*, 161 F. (2) 949 (1947), *supra*, the Court of Appeals for the Sixth Circuit expressly rejected the con-

tention that collective bargaining requires that "the company must bargain and again bargain and yet again bargain without regard to breaches of contract by the union" (161 F(2) at p. 953). More important, however, in the case at bar, there has been no demand by the union that Clause 13(a) be changed and indeed, in the new collective bargaining agreement, an identical clause was inserted without objection from respondent locals. Respondent locals realize that if they make a demand to modify the agreement before its expiration date they will be guilty of an unfair labor practice which will authorize the National Labor Relations Board to take action against them. Thus, they make no demand to modify the agreement. Instead they violate the agreement by tolerating and encouraging the individual longshoremen in their refusal to work in accordance with the distribution required by Clause 13(a). The language used in the *Timken* case, *supra,* is equally applicable here (p. 954):

> "Nor is there denial of the right of a collective bargaining agent to seek, or the obligation of an employer to consider a request to amend an existing contract. That is not this case. Nowhere in the record is there evidence that the union sought to change its contract with the company. The contention that a request to negotiate in respect to the causes of the strike or other grievances outside the grievance procedures of the contract is impliedly a demand upon the company to negotiate a change in the contract, only begs the question, for if every grievance, however important or unimportant, is a request to change the contract, then the parties are back where they started, and the written agreement with its detailed procedures for adjusting grievances, is truly but a 'scrap of paper.' "

If the holding of the lower Courts is correct, then no purpose would be served by including in a collective bar-

gaining agreement an arbitration provision or a "no strike—no lockout" provision, for under the Courts' ruling either side may repudiate any provision in a collective bargaining agreement without fear of coercive sanction. Most, if not all, collective bargaining agreements contain a provision for arbitration. Certainly when a disagreement over the meaning of any clause is referred to arbitration the award settles the controversy and ends the labor dispute. According to the decision below, however, if after the determination a few dissident or recalcitrant members of the bargaining unit take it upon themselves to refuse to accept the findings and abide by the arbitration award, such action either creates a new labor dispute or continues the old labor dispute. Such a rule makes arbitration, in fact collective bargaining, a futility because of inability to enforce the award or agreement. In other words, what the Courts below have held is that after a collective bargaining agreement is entered into and a question as to the meaning of one of its provisions arises, either the employer or the union may consent to a submission of the issue for determination in the hope that a favorable decision will be made; if the decision is not favorable, however, either of them may ignore it. Clearly, however, the Norris-LaGuardia Act cannot be relied upon to further such purposes since the Act was not intended to perpetuate labor disputes or to weaken collective bargaining.

The opinion of this Court in *United States* v. *Mine Workers*, 330 U. S. 258 (1947), is not contrary to our views. That case involved an interpretation of a collective bargaining agreement between the Government and the mine workers. While the Court decided that the Norris-LaGuardia Act was inapplicable because of the peculiar circumstances there existing, it implied that had the dispute been between private parties, the prohibition of the Act would have ap-

plied. If that were so, however, it would have been only because an actual controversy existed concerning the meaning of the collective bargaining agreement. At page 320 it was said:

> "The proper interpretation of this collective agreement between the Government and the United Mine Workers is precisely what is at the bottom of this controversy."

All the decisions recognize that a "labor dispute" can be ended by appropriate determinations and when a "labor dispute" is thus settled it ceases to exist and from that point on the Act has no application. This rule of law has developed principally in matters involving labor disputes concerning bargaining representatives. The cases uniformly hold that any dispute concerning representation cannot survive a certification by the National Labor Relations Board and that a minority who may be dissatisfied with the result of the election and the collective bargaining agreement effected by the certified representatives, do not create a labor dispute by their repudiation of what has occurred. The Act makes no distinction between labor disputes concerning terms and conditions of employment, and labor disputes concerning collective bargaining representatives. See 47 Stat. 73, 29 U. S. C. Sec. 113(c). If a labor dispute concerning collective bargaining representatives is effectively resolved by a certification, then also a labor dispute concerning terms and conditions of employment is just as effectively resolved by a collective bargaining agreement, the meaning of which is not in dispute. If in the first case, the repudiation of the certification by a dissatisfied minority does not create a labor dispute, then similarly in the latter case the repudiation of the collective bargaining agreement by a dissatisfied minority does not

create a labor dispute, for in both cases the parties are bound by their conduct.

In *Oberman & Co., Inc.* v. *United Garment Workers of America, et al.*, 21 F. Supp. 20 (1937), the plaintiff, an employer, sought an injunction to restrain the defendants, a minority union, from interfering with his factory operations, which they were doing, because plaintiff had refused to recognize the defendant as the bargaining agent for his workers. Plaintiff's refusal was based on the certification by the regional director of the National Labor Relations Board of a majority union. The question was whether or not the Norris-LaGuardia Act was applicable. The Court found that it was not applicable since the "labor dispute" could not survive the certification of the National Labor Relations Board. An injunction was issued accordingly.

The Court stated, at page 26:

> "According to the averments of the bill there could not be a labor dispute in this case. *The National Labor Relations Board has settled the only controversy in the case.* It was authorized to do this by statute. Its certificate stands unchallenged. • • • So far as this record shows, therefore, all controversies *have been ended* and the command of the statute [Wagner-Connery Act] is that the representatives certified by the regional directors 'shall be the exclusive representatives of all the employees'. 29 U. S. C. A. §159(a)." (Italics ours; matter in brackets added.)

To the same effect is *Florsheim Shoe Store Co.* v. *Shoe Salesmen's Union*, 288 N. Y. 188, 42 N. E. 2d 480 (1942), where a company union, which later affiliated itself with the A. F. of L., was certified by the New York State Labor Relations Board as the exclusive representative of all plaintiffs' employees. The defendants, a minority union, resisted this determination by picketing the plaintiffs' stores. Plaintiffs

petitioned for, and obtained, an injunction restraining defendants from picketing and otherwise interfering with their business.

The Court stated at page 200:

> "On the record here presented *it is impossible for the respondents successfully to maintain that any 'labor dispute' between plaintiffs and defendants theretofore existing under section 876-a of the Civil Practice Act survived the certification by the Labor Relations Board of the collective bargaining agent for plaintiffs' employees and the execution of the collective bargaining contract.* Nothing in this opinion is designed to interfere with, impede or diminish in any way the right of employees lawfully to strike or engage in other lawful concerted activities or leave plaintiffs' employ if they so desire, nor do we recede from principles relating thereto laid down in earlier decisions of the court. The action here is to restrain unlawful actions and their threatened continuance not governed by procedure other than a general action in equity (Compare Busch Jewelry Co. *v.* United Retail Employees' Union, 281 N. Y. 150). *It was unlawful, upon the record in this case, for the defendants to continue or renew or to threaten to continue picketing of appellants' shops for the reason that the minority were dissatisfied with the result of the election and with the terms of the contract duly negotiated and entered into between the appellants and the duly certified representative of the employees.* * * *." (Italics ours.)

In accord is *Donovan Lumber Mills* v. *International Woodworkers of America Local No. 46,* 4 Wash. 2d 62, 102 P. 2d 270 (1940) where a minority union, picketing plaintiff after its rival organization had been certified by the National Labor Relations Board, was enjoined from such activity; also *Union Premier Food Stores Inc. et al.* v.

Retail Food Clerks and Manager's Union, Local No. 1357, 98 F. 2d 821 (3d Cir., 1938), aff'd 101 F. 2d 475 (3d Cir., 1939), reversed on other grounds, 308 U. S. 526 (1940), where members of defendant union, who picketed plaintiffs during an inter-union dispute, although hearings were pending before the National Labor Relations Board to determine proper bargaining representatives, were restrained by court order. In *Fur Workers' Union, Local No. 72* v. *Fur Workers' Union* (1939), 105 F. 2d 1, aff'd 308 U. S. 522, it was held that, until a representation dispute is settled by certification of the National Labor Relations Board, a controversy in regard to majority representation of employees is a "labor dispute" which prevents injunctive relief by virtue of the Norris-LaGuardia Act, regardless of hardship to the employer. This case is not in conflict with the other cases because it inferentially holds that injunctive relief would have been granted had the controversy been resolved by order of the National Labor Relations Board. The Court stated at page 17:

> "• • • the controversy involved in the instant case is a labor dispute and that only the National Labor Relations Board in the first instance can end that dispute by certification, and that no injunction can issue under the Norris-LaGuardia Act *in the absence* of the findings required thereby." (Italics ours.)

Certainly if a labor dispute concerning representation is completely resolved by an appropriate certification, then a labor dispute concerning terms and conditions of employment is just as completely resolved by the execution of a collective bargaining agreement, the meaning of which is not in dispute. If in the first case the parties are bound by their conduct for the duration of the certification, so,

in the latter case, they are bound by their conduct for the duration of the collective bargaining agreement.

The Court of Appeals clearly erred when it concluded that the Norris-LaGuardia Act applies to a labor dispute even after the dispute has been resolved. In its opinion the Court, rejecting petitioners' arguments, stated "It would, therefore, follow that the Norris-LaGuardia Act only applies to a labor dispute before it had been decided; in short, an employer could not get a temporary injunction, but he could always get a permanent injunction (R. 65).

Clearly the Act could have no application to labor disputes which no longer exist and which have been resolved. Cf. *Bakery Drivers Union* v. *Wagshal*, 333 U. S. 437, 443 (1948). That this is so, however, does not produce the result which the Court below believed would follow; namely, that employers while they could not get temporary injunction, could obtain permanent injunction in all cases even those involving labor disputes. Concededly the Norris-LaGuardia Act by its express terms forbids the granting of either temporary or permanent injunctions in the cases of labor disputes. If a labor dispute exists at the time a petition for injunctive relief is filed, there is no doubt that the provisions of the Act forbid a Court from granting either a temporary or permanent injunction. If, however, a labor dispute is not in existence at the time the petition for injunctive relief is filed, then the Act has no application and the Court may grant a temporary or permanent injunction or both in accordance with its general equity powers.

In the case at bar, at the time the petition for injunctive relief was filed, no labor dispute existed concerning the terms and conditions of employment. Accordingly, the District Court was not deprived of jurisdiction because of the Norris-LaGuardia Act.

CONCLUSION.

Because the question involved has an important effect upon the worth of collective bargaining agreements in stabilizing labor relations and preventing strikes and industrial strife, petitioners respectfully submit that a writ of certiorari should be granted as prayed for in the petition so that the question presented may be definitely and finally determined.

Respectfully submitted,

A. V. CHERBONNIER,
Counsel for Petitioners,
120 Broadway,
New York 5, N. Y.

LOUIS J. GUSMANO,
Of Counsel.

APPENDIX.

Section 1 of the Norris-LaGuardia Act (29 U. S. C., Sec. 101):

> "No court of the United States, as defined in sections 101-115 of this title, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of such sections; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in such sections."

Section 13(c) of the Norris-LaGuardia Act (29 U. S. C., Sec. 113(c)):

> "(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."